GUNTER'S ADM'R *v.* SOUTHERN RY. CO.

Jan. 22, 1920.

[101 S. E. 885.]

1. Negligence (§ 83*)—"Last Clear Chance" Doctrine Defined.—The doctrine of "last clear chance" is that, where there was an appreciable interval of time between plaintiff's negligence and his injury, during which defendant by exercise of ordinary care could and ought to have avoided the effects of plaintiff's prior negligence, defendant failing to do so, is liable.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Last Clear Chance. For other cases, see 10 Va. W. Va. Enc. Dig. 389; 11 Va.-W. Va. Enc. Dig. 575.]

2. Railroads (§ 376 (2)*)—Duty to Trespasser Discovered Defined.—Right of mere trespasser on railroad to recover for injury by train must be bottomed on the company's failure, after discovering him, to exercise care to avoid injuring him; no duty of lookout being owed him.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 571, 572.]

3. Railroads (§ 390*)—Knowledge of Apparent Unconsciousness of Danger Necessary for Liability under Last Clear Chance Doctrine.—To justify recovery under last clear chance doctrine for injury to person on railroad, the situation must have been such that those operating the train, in the exercise of ordinary care and prudence, were admonished that he was apparently unconscious of his peril, and would take no steps to secure his own safety.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 575.]

4. Railroads (§ 390*)—Duty to Licensee under Last Clear Chance Doctrine Begins When He Should Have Been Discovered.—Duty of lookout being owed to a licensee on a railroad, it is action after the time when his presence ought to have been discovered, and not merely from the time it actually was discovered, that determines liability under the last clear chance doctrine.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 575.]

5. Trial (§ 156 (2), (3)*)—Plaintiff's Evidence on Demurrer Thereto Is Accepted and Defendant's Rejected.—On demurrer to plaintiff's evidence, all of it, and all inferences therefrom that a jury might fairly draw, must be accepted as true, and all of defendant's evidence in conflict therewith must be rejected.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 522.]

6. Railroads (§ 400 (14)*)—Evidence Sufficient for Jury under Last Clear Chance Doctrine Where Licensee on Track Was Struck.—Evidence that engineer of train, coasting at rate of 50 miles an

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

hour, from the time he was 500 yards away, saw several persons walking on the track in the same direction that the train was going, and gave no warning, though none of them gave evidence of consciousness of train's approach, is sufficient to go to jury under the last chance doctrine.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 575.]

7. Railroads (§ 390*)—Duty under Last Clear Chance Doctrine to Licensee on Track Is to Discover Peril and Avoid Injury.—Duty of engineer under the last clear chance doctrine is to use ordinary care to discover the peril of licensee on track, and, having discovered it, to use like care to avoid injuring him, and omission of either is actionable.

Sims, J., dissenting in part.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 575.]

Error to Circuit Court, Pittsylvania County.

Action by Lena W. Gunter's administrator against the Southern Railway Company. Judgment for defendant, and plaintiff brings error. Reversed.

Harry Wooding, Jr., of Danville, and *J. R. Joyce* and *P. W. Glidewell,* both of Reidsville, N. C., for plaintiff in error.

R. B. Tunstall, of Norfolk, and *Withers, Brown & Leigh,* of Danville, for defendant in error.

HUNT *v.* COMMONWEALTH.

Jan. 22, 1920.

[101 S. E. 896.]

1. Indictment and Information (§ 125 (31)*)—Count Charging Various Offenses against Liquor Laws Is Good.—A count charging that defendant did unlawfully "manufacture, transport, sell, keep, store and expose for sale, give away, dispense, solicit, advertise, and receive orders for ardent spirits," is good.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 30.]

2. Intoxicating Liquors (§ 210*)—Count for Bringing Liquor into State Is Good Where It Does Not Charge Transportation in Interstate Commerce.—A count charging that defendant unlawfully brought ardent spirits into the state from a point without the state was good, where it did not charge that they were transported in interstate commerce.

3. Witnesses (§ 277 (2)*)—Question Whether Accused Would Swear to Anything Need Not Be Stricken.—Where there was testimony tending to show the intimate friendship and association ex-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.